

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 07 2008

MOLLY DWYER, ACTING CLERK  
U.S. COURT OF APPEALS

QUN CHEN,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 05-76934

Agency No. A77-745-681

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted February 26, 2008<sup>\*\*</sup>

Before: BEEZER, FERNANDEZ and McKEOWN, Circuit Judges.

Qun Chen, a native and citizen of China, petitions for review of the Board of Immigration Appeals' ("BIA") decision dismissing his appeal from an Immigration Judge's ("IJ") order denying his application for asylum, withholding of removal,

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

and relief under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence an adverse credibility finding and will uphold the IJ’s and BIA’s decisions unless the evidence compels a contrary conclusion. *Malhi v. INS*, 336 F.3d 989, 992-93 (9th Cir. 2003). We review *de novo* due process challenges to immigration decisions. *See Barron v. Ashcroft*, 358 F.3d 674, 677 (9th Cir. 2004). We deny the petition.

Substantial evidence supports the IJ’s and BIA’s denial of Chen’s asylum claim on the basis of an adverse credibility finding. Chen’s documentary evidence was inconsistent with his testimony regarding matters that go to the heart of his claim, including whether he was detained by the family planning unit or the local police, and whether he was released from detention after paying a fine or instead escaped. *See Pal v. INS*, 204 F.3d 935, 938 (9th Cir. 2000).

In his opening brief, Chen failed to raise, and therefore has waived, any challenge to the IJ’s and BIA’s determinations that he is ineligible for withholding of removal or CAT relief. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir. 1996).

Substantial evidence also supports the IJ’s and BIA’s conclusion that Chen filed a frivolous asylum application. *Cf. Farah v. Ashcroft*, 348 F.3d 1153, 1157-

58 (9th Cir. 2003) (citing 8 U.S.C. § 1158(d)(6) and 8 C.F.R. § 208.20, and laying out criteria for finding an application is frivolously filed).

Chen's claim that the IJ violated his due process rights by denying his request for a continuance is denied because he fails to show prejudice. *See Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000).

Chen's claim that the IJ's questioning violated his due process rights also fails, because the Due Process Clause does not preclude an IJ from asking questions of witnesses, and because Chen has fails to show prejudice. *See Antonio-Cruz v. INS*, 147 F.3d 1129, 1131 (9th Cir. 1998).

**PETITION FOR REVIEW DENIED.**